

**PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2017-077-10229R

Parcel No. 090/00227-000-000

Marvin H. Van Dusseldorp,

Appellant,

vs.

Polk County Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on March 6, 2018. Marvin Van Dusseldorp was self-represented. Assistant Polk County Attorney Mark Taylor represented the Board of Review.

Marvin and Janice Van Dusseldorp own a residential property located at 651 61st Street, Des Moines, Iowa. The property's January 1, 2017 assessment was set at \$146,500, allocated as \$33,300 in land value and \$113,200 in building value. (Ex. A).

Van Dusseldorp petitioned the Board of Review claiming the assessment was not equitable as compared to the assessments of other like property, the property was assessed for more than the value authorized by law, and there is an error in the assessment under Iowa Code sections 441.37(1)(a)(1)(a, b, & d). The Board of Review denied the petition. Van Dusseldorp reasserted his claims to PAAB.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2017). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount.

§§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it.

§ 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* Conversely, sale prices of abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the factors that distort market value, including but not limited to foreclosure or other forced sales. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

Findings of Fact

The subject property is a 0.273-acre site with a one-story home built in 1950. It has 994 square feet of gross living area, 406 square feet of low-quality basement finish, and an attached two-car garage. The property is listed as average quality construction (4+05 grade) and in normal condition. (Ex. A).

Van Dusseldorp testified that when he purchased the subject property in 1993, he had no idea a floodgate system for controlling Walnut Creek was going to be developed in the area. Further, he said there was no evidence of flooding inside the dwelling at that time. Based on a handwritten note on the disclosure statement, "the

sellers disclosed that part of the lot is in a flood plain, but no damage due to flood.” (Ex. 1A, p. 9). After the floodgates were installed, Van Dusseldorp discovered his property is on the wrong side of that levee system, and the subject property suffered from flooding in 1998 and 2010.

The flood water in his basement has been as deep as 19-1/2”, saturating the carpet and requiring furniture to be elevated in an attempt to keep it out of harm’s way. (Exs. 2 & 8). The West Des Moines Principal Engineer confirmed Walnut Creek reached an elevation at the bottom of the roadway gates at 1st Street north of Ashworth Road on two separate occasions. (Ex. 3). After having gone through flooding twice, Van Dusseldorp stated he now lives in fear with every heavy rain forecast.

On his petition and appeal forms, Van Dusseldorp stated there is an error in the subject property’s assessed value because no consideration was given for the greatly increased flood hazard created by the construction of a levee system. The flood system caused the subject property to be located on the flood-pool side, with his home flooded thus far on two separate occasions.

Amy Rasmussen, Director of Litigation for the Polk County Assessor’s Office, testified on behalf of the Board of Review. She stated they periodically receive flood maps from FEMA, and noted the blue area on the FEMA map for the subject property’s area designates the floodway/stream. (Ex. X). She point out that the subject property is the triangular shaped lot along the east side of 61st Street, noting it is not in the floodway/stream but it is in the floodplain. Therefore, it may experience some flooding. She also referenced the POLK COUNTY RESIDENTIAL PROCEDURES MANUAL, p. 82 (2014), noting it delineates standard adjustments for “floodway improved,” “flood plain,” and “floodway vacant,” explaining stated values may be overridden. (Ex. Z). While the standard floodplain adjustment is 5%, she pointed out that the subject property receives an 8% floodplain adjustment to its land value and also an 8% economic obsolescence to its dwelling value because of its location in the floodplain. (Exs. B & Z).

Van Dusseldorp argued the stated economic obsolescence applied to his assessment is in error based on his belief that the threat of flooding is worse than traffic noise. He referred to four nearby properties located along heavily traveled 63rd Street,

which all received a 10% economic obsolescence for traffic noise, while his property only received 8% for flooding. He noted he used to live along E 33rd Street, which is also a heavily traveled street. He contends traffic noise pales in comparison to the adverse effects of flooding. He further argued the owners of the properties on 63rd Street could see the high traffic counts on the street when they purchased their property, so they were able to be an informed buyer, whereas he feels tricked as there was no indication flooding would be an issue when he purchased his property.

Rasmussen stated one would have to look at the market to see whether traffic noise is so severe that it is affecting market prices along a given street. She also noted variations exist between locations based on whether traffic noise is constant or only occurs during brief periods of time or only during seasonal events (e.g., Iowa State Fair). She stated that while flooding has been troublesome for them, it has not occurred on a regular basis, so market data is needed to determine the effect of flooding on the subject property's value.

Van Dusseldorp argued his property is over assessed because if someone buys it and takes on the flood risk it will most likely be at a low bargain price, because he must now disclose his home has been flooded. He stated the general premise of homeownership is some gain will be realized when the property is ultimately sold, but he believes he can no longer look forward to a reasonable gain.

Van Dusseldorp also contends the subject property is inequitably assessed in comparison with similar homes in the area, because their assessments are \$4700 to \$25,500 lower than his yet they do not suffer from flooding like the subject property. (Ex. 12). He offered nine comparable properties in support his of his claim. (Ex. 12). The Board of Review also provided the property record cards and cost sheets for each of the properties. (Exs. C-U). The following table summarizes the information provided.

Comp	Address	2017 Assessed Value	Site Size	Gross Living Area
Subject	651 61st St	\$ 146,500	0.273	994
1	675 63rd St	\$ 122,300	0.225	996
2	679 63rd St	\$ 127,000	0.193	955
3	683 63rd St	\$ 121,900	0.193	1071
4	687 63rd St	\$ 127,900	0.241	1120
5	1054 64th St	\$ 134,600	0.340	988
6	1015 64th St	\$ 126,800	0.265	994
7	1011 64th St	\$ 141,500	0.265	992
8	1108 8th St	\$ 141,800	0.335	1144
9	704 Valhigh Rd	\$ 141,000	0.172	1010

Van Dusseldorp questioned why the Board of Review was critical of his nine comparable properties. Rasmussen noted Comparables 5 through 9 are located in Windsor Heights or West Des Moines, which gives them a different neighborhood factor. She also referred to features the subject property has that the others do not, such as an additional bath, an extra fixture, a fireplace, an open porch, a patio, finished basement, and an attached garage. (Ex. 12). The subject property is also listed with slightly better quality of construction (Grade) than Comparables 1-4, which would also cause his assessment to be higher. Comparables 7 and 8 are the only ones with basement finish, both of which are roughly the same size as the subject's albeit Comparable 8's is of average quality as compared with the subject's low quality finish. But Comparable 8 also receives an economic obsolescence for traffic.

The record reflects two of the comparable properties recently transferred ownership. Comparable 1 transferred to the surviving spouse. (Ex. C). Comparable 6 transferred to the person who had served as the trustee for the trust that had held title to the property. (Ex. N). Market value at the time of transfer is unknown for either property.

There is a tenth comparable property in the record, 705 63rd Street, which is the only verified recent sale. It has a slightly larger site; almost twice the square feet of gross living area as the subject property; three times more square feet of basement finish, of which two-thirds are of higher quality finish. The property sold in October 2016

for \$297,450 and its 2017 assessed value is set at \$288,500. Its assessment to sales price ratio is 0.97 indicating it is assessed for less than its market value.

Van Dusseldorp questioned why the same appraiser (Brett Tierney) reviewed the Appraiser Analysis as developed it. (Ex. 1A). Rasmussen explained that the subject property is located in Tierney's appraisal area, which is why he was the reviewer. She stated he would not have set the subject property's assessed value because the Assessor's Office does mass appraisals. There are approximately 176,000 parcels in Polk County so they do not go out and look at every single parcel during the biannual revaluation instead they use statistical measures to value properties (e.g., sales). She noted it is quite different than the appraisal approach used for mortgage lending or legal proceedings where the value of specific assets needs to be known. Rasmussen explained Tierney was simply reviewing the mass appraisal valuation given a Board of Review petition had been filed. He was checking to see whether a value adjustment may be warranted. A property is not appraised at on an individual basis unless something occurs to warrant that, such as the issuance of a building permit. Van Dusseldorp confirmed no building permit had been taken out on his property.

Analysis & Conclusions of Law

Van Dusseldorp contends his property is inequitably assessed, over assessed, and there is an error in the assessment.

On his petition and appeal, Van Dusseldorp stated there is an error in the subject property's assessed value because no consideration was given for the greatly increased flood hazard created by the construction of a levee system that caused the subject property to be located on the flood pool side, with his home flooded thus far on two separate occasions. However, the record indicates the subject property did receive an 8% economic obsolescence on both its land value and dwelling value because of flooding. At hearing, Van Dusseldorp further suggested the economic obsolescence applied to his assessment is in error, based on his belief that the threat of flooding is worse than traffic noise; referring to a higher 10% economic obsolescence for traffic received by nearby parcels located along a heavily traveled street. However, Van

Dusseldorp did not prove the economic obsolescence percentage for flooding was wrong nor what its correct value should be. Simply comparing percentages for varying factors is insufficient. Therefore, we find Van Dusseldorp failed to prove an error in his assessment.

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Van Dusseldorp offered no evidence of the Assessor applying an assessment method in a non-uniform manner.

Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The *Maxwell* test provides inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of its actual value. *Id.*

Only one of the ten comparable properties in the record, 705 63rd Street, recently sold. Its assessed value (2017) to sale price (2016) ratio is 0.97. A ratio less than 1.00 indicates a property is under assessed. A ratio greater than 1.00 indicates a property is over assessed. Nevertheless, more than one recent sale is required to complete the *Maxwell* equity analysis. Moreover, no evidence was offered of the subject's fair market value, which is also required under *Maxwell*. For these reasons, we find Van Dusseldorp failed to show the subject property is inequitably assessed.

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Only one of Van Dusseldorp's comparables was a recent sale. However, he made no adjustments for differences between it and the subject property to arrive at an opinion of market value for January 1, 2017. Simply comparing assessments of properties with varying amenities as compared with the subject property is insufficient for demonstrating the subject property's fair market value. Typically, a residential

property's market value is demonstrated with a competent appraisal or comparable market analysis that considers at minimum the sales comparison approach to value.

Viewing the record as a whole, we find Van Dusseldorp failed to support his claims.


Order

PAAB HEREBY AFFIRMS the Polk County Board of Review's action.

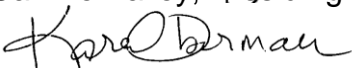
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2017).

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

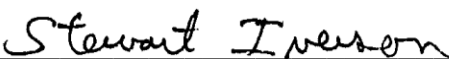
Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Camille Valley, Presiding Officer



Karen Oberman, Board Member



Stewart Iverson, Board Chair

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Polk County Board of Review by eFile